O/B.R.O./53

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Legal Dept

G. BRANCH

**Subject:—** Opinion on the Bombay Rationing order

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# C O N T E N T S

Legal Department File No. O.B.R.O./53


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Office of the R.L.A.

City of Bombay Rationing Regulation 1948

Clause 18B.

In the case of the Nasar Restaurant the question of prosecution for breach of clause 18B of the Bombay City Rationing Regulation, 1943 was dropped as there was no evidence to prove that the direction at page 11 ante was issued or served on the said Restaurant. The Controller of Rationing's office has now raised the following general question for R.L.A's opinion, namely:-

"whether any authorised establishment can be prosecuted for contravention of any direction issued by the Controller of Rationing under clause 18B of the City of Bombay Rationing Regulation, 1943".

It is true that clause 18B of the City of Bombay Rationing Regulation provides that every person in charge of an authorised establishment shall comply with such incidental directions as may be issued from time to time by the State Government or any officer authorised by the State Government in this behalf. But it would depend upon the circumstances of each case whether failure to comply with any particular direction issued under caluse 18B would amount to a contravention of clause 18B. The question raised is of a hypothetical nature and no useful purpose will be served by attempting to answer it.

Sd/- J.R.Dhurandhar

O.C.

Remembrancer of Legal Affairs.

U.R. to C. of R., No. G- 235, dated the 22nd April 19

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Legal Department.

Clause 16 of the Bombay Rationing Order, 1 943 has no application to the present case inasmuch as the co-operative society did not transfer any ration document. It is true that ordinarily under caluse 3, sub-caluse (2) of the Bombay Rationing Order, 1943, an authorization can be cancelled or rescinded for the breach of any of the provisions of the Order or conditions of the authorization itself, but it can also be rescinded when there is no proper authority to operate the authorization as the absence of such authority would be a reasonable ground. A Co-operative society being a body corporate can act only through its managing committee. In the present case, the Managing Committee was suspended and two administrators were appointed to take over the management of the society; but those two persons were not able to take over the charge of the affairs of the society as the old Managing Committee which was suspended continued to manage the affairs of the society and did not allow the administrators to function. That being so, the suspended Managing Committee was illegally and unauthorizedly managing the affairs of the society and consequently that managing committee had no power to operate the authorization issued under the Bombay Rationing Order, 1943. The Development Department appears to be of the view that the dispute between the old Managing Committee and the new administrators should have been got settled by a reference under the Bombay Co-operative Societies Act and Government should not have intervened by cancelling the authorization, but the District Magistrate could not have allowed the authorization to be operated by any unauthorised person, for the rights and obligations under the Bombay Rationing Order, 1943, could not be properly enforced against such person. The Collector's action in cancelling the authorization issued to the society under clause 3, sub-clause (2) of the Bombay Rationing Order therefore does not appear to be illegal.

Sd/-
Additional Secretary to Government.

U.R. to C.S.D. No. G-357, dated the 20th June 1953.

Legal Department.

Uncer sub-clause (1) of clause 10 of the Bombay Rationing Order, 1943, an officer or a person authorised by the State Government can inspect any stocks and ac account books etc., enter any premises, ask any questions require production of any documents, take extracts from or copies of documents produced and take weight or measure of any ration articles. Under sub-clause(2) of th a person when so required by an officer or a person said clause authorised under sub-clause(1) has to allow access to premises, answer all questions to the best of his knowledge and belief, produce the documents in his possession and allow extracts from or copies of any such documents or weight or measure of any rationed article found in the premises to be taken.. Power of seizure is contained in sub-clause(3) of clause 19 which can be exercised only by an attested officer and not by an authorized person. Consequently if any members of the two Rationing Advisory Committees are authorized under clause 19 of the Bombay Rationing Order, 1943, they would not have the power to seize any article.

Sd/-

O.C.

Additional Secretary to Government.

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4 Cs.

Legal Department:

There is no provision in the Bombay Rationing Order, 1943 or the City of Bombay Rationing Regulations for taking any deposit from catering Establishments for issuing or continuing the authorisations and ration permits and for forfeiting it. In this case the authorisation and the ration permit were suspended from 27th June 1948 pending prosecution of a partner of Lucky Restaurant for an alleged offer of illegal gratification to a Rationing Inspector. On the 21st July 1948 the partner wrote to the Controller of Rationing stating that he was ready to furnish any guarantee and to pay any deposit and requesting that his permit may be restored. On the 23rd July 1948 he was informed by the Controller of Rationing that on reconsideration of his case it was decided to restore his ration permit and authorisation after forfeiture of a deposit of Rs. 1,000/- which he should immediately pay and after making good the forfeited amount as security for future good conduct. Rs.2,000/- were paid by the parties of the Restaurant on the 27th July 1948. This shows that they impliedly agreed to make a deposit and to forfeit it in view of suspension. On the 5th January 1949 the partner was given the benefit of doubt and was acquitted by the learned Presidency Magistrate. On the 6th October 1949, the partners applied for refund of penalty and deposit in view of the acquittal. On the 25th October 1949 they were informed by the Rationing Officer, Establishment that although the partner was acquitted it cannot be said that he was free from balme as the cashier admitted payment of Rs. 75/- to the Rationing Inspector which could not be without the knowledge and instructions of the master and therefore it was not possible to refund the deposit and penalty. The partners have now given a notice of suit if Rs.2,000/- are not refunded.

The procedure followed in this case is not legally correct. An agreement ought to have been taken from the partner while taking the deposit that he was willing to pay deposit and agreeable to its forfeiture in certain circumstances. It can however be argued that such an agreement was impliedly made in this case and the amount so forfeited cannot be refunded.

the deposit cannot also be refunded so long as the authorisation and the rationing permit are current. There are weak points in the case and inspite of the fact that licensee made the deposit, it will be difficult to support the action of the Civil Supplies Department in this case.

Sd/- J.R.Dhurandhar

15/10

Additional Secretary to Government.

U.R. to C.S.D., No. G- 640, dated the 15th October 1953.

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4 Cs.

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